

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

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J.D.H., a minor, by and through her legal  
guardian and/or parent INOCENTE  
DOMINGUEZ; and MARIA  
HERNANDEZ,

Plaintiffs,

v.

LAS VEGAS METROPOLITAN POLICE  
DEPARTMENT, *et al.*,

Defendants.

Case No. 2:13-CV-01300-APG-NJK

**ORDER GRANTING DEFENDANTS' MOTION  
FOR SUMMARY JUDGMENT**

ECF No. 99

The plaintiffs originally filed this lawsuit against the Las Vegas Metropolitan Police Department ("LVMPD"), Officers J. Barker and M. Purcaro, and Sheriff Douglas Gillespie, asserting a variety of federal and state law claims. ECF No. 1. I previously dismissed the claims for due process violations, excessive force, battery, assault, and negligent infliction of emotional distress. ECF No. 40.<sup>1</sup> I allowed the plaintiffs to amend the complaint to add claims for negligence and fraudulent misrepresentation. ECF No. 77.

Defendants LVMPD, Barker, and Purcaro now move for summary judgment on the plaintiffs' remaining claims for equal protection violations, discrimination under Title VI, negligence, fraudulent misrepresentation, and intentional infliction of emotional distress ("IIED"). The plaintiffs have failed to present sufficient facts to support these claims, or even to create a genuine issue of material fact about them. Therefore, I grant summary judgment in favor of the defendants.

**I. BACKGROUND**

Plaintiff J.D.H. is the minor child of plaintiff Maria Hernandez and her legal guardian Inocente Dominguez. ECF No. 78 at 2-3. On July 23, 2011, J.D.H. crossed the street near her

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<sup>1</sup> I also dismissed all claims against Sheriff Gillespie, with leave to amend within 30 days if the plaintiffs could allege facts supporting their claims against him. ECF No. 40. The plaintiffs did not file an amended complaint within 30 days.

1 house to buy ice cream from an ice cream truck. ECF No. 107 at 27. J.D.H. was accompanied by  
2 two of her siblings. *Id.* After buying ice cream, J.D.H. was about to cross the street back toward  
3 her house when a Chevrolet Avalanche drove by and ran over her foot, knocking her to the  
4 ground. *Id.* at 27-28, 31, 40. One of the children testified that the car was going fast and was  
5 close to the ice cream truck when it passed. *Id.* at 39-40. The section of the street where J.D.H.  
6 and the other children crossed was not located at an intersection and had no cross-walk or  
7 pedestrian right-of-way. *Id.* at 31-32; ECF No. 102 at 110.

8 At the time J.D.H. was struck, Mr. Dominguez had just pulled into the driveway of their  
9 house. ECF No. 104 at 23. He did not witness the accident. *Id.* The driver and passenger of the  
10 Avalanche exited the vehicle and the driver told Mr. Dominguez not to call the police. ECF Nos.  
11 103 at 36; 104 at 26, 28-29. When they saw that Mr. Dominguez was calling the police and had  
12 taken a photo of their license plate, they got back in their vehicle and drove off. ECF Nos. 103 at  
13 42; 104 at 28-29. They returned on foot a few minutes later after parking the Avalanche a few  
14 blocks away. ECF No. 104 at 29.

15 Ms. Hernandez was in the house when the accident occurred and did not see it. ECF No.  
16 103 at 32. She learned of the accident when one of the children ran into the house and told her  
17 J.D.H. had been hurt. *Id.* Upon exiting the home, Ms. Hernandez saw the ice cream truck parked  
18 across the street and the driver of the ice cream truck arguing with the driver of the Avalanche. *Id.*  
19 at 40; ECF No. 102 at 107. At that time, Mr. Dominguez was carrying J.D.H. in his arms. ECF  
20 No. 103 at 35-36.

21 Metro Officers Barker and Purcaro arrived on the scene soon after the accident. *Id.* at 36,  
22 42. Officer Purcaro spoke to the driver and passenger of the Avalanche and Officer Barker spoke  
23 with the plaintiffs. *Id.* at 31-32; ECF No. 106 at 145. The Avalanche driver told Officer Purcaro  
24 that as they passed the ice cream truck he heard a scream, he did not see J.D.H. before the  
25 accident. ECF No. 106 at 151-153.

26 Officer Purcaro testified at his deposition that the Avalanche driver seemed shaken up by  
27 the accident, while the passenger of the vehicle seemed more defensive. ECF No. 106 at 151-52.

1 Officer Purcaro also testified that the driver and passenger appeared somewhat threatened  
2 because several people present at the scene were yelling at them, many of whom were saying that  
3 it was the driver's fault. *Id.* at 151-154.

4 Officer Purcaro called in the Avalanche's license plates to LVMPD's dispatch. ECF No.  
5 100 at 182. The passenger in the Avalanche was the owner's daughter and the driver was her  
6 friend. *Id.* Officer Purcaro testified that he could not remember if the Avalanche driver produced  
7 his driver's license. ECF No. 106 at 172. He also stated that the Avalanche driver may have  
8 produced an insurance card but that he did not take down the information because he was not  
9 preparing an accident report at that time. *Id.*

10 Officer Barker did not speak Spanish and Mr. Dominguez did not speak English. ECF No.  
11 102 at 93. Officer Barker did not call an LVMPD interpreter to help translate, but rather spoke to  
12 Mr. Dominguez through an individual on the scene who was bilingual. *Id.* at 93-94; ECF No. 100  
13 at 185. Officer Barker did not seek assistance from LVMPD's Spanish language interpreters  
14 because he thought the people on the scene could translate. ECF No. 102 at 105. He was able to  
15 have an uninterrupted dialogue with Mr. Dominguez through the interpreter. ECF No. 100 at 185.  
16 Mr. Dominguez asked Officer Barker to write a report indicating that the driver of the Avalanche  
17 was at fault. ECF No. 102 at 108-09.

18 All of the witnesses agreed that J.D.H. had stepped out in front of the ice cream truck and  
19 that the Avalanche ran over her foot when it passed by. *Id.* at 182, 185. Officer Barker explained  
20 to Mr. Dominguez that any accident report would need to indicate that J.D.H. was at fault because  
21 she walked into the street. *Id.* at 186. He testified that to ensure Mr. Dominguez understood, he  
22 "went so far as to act out what had happened," and that Mr. Dominguez declined a report after  
23 learning that it would indicate J.D.H. was the cause of the accident. *Id.*

24 Mr. Dominguez testified at his deposition that he asked the officers, through a friend who  
25 was interpreting, for paperwork regarding the driver's information but the officers responded that  
26 the accident was the plaintiffs' fault. Specifically, Mr. Dominguez testified:  
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1 I remember telling Isidro's son for them – for him to ask of the paperwork  
2 to the – to the one who was driving, to ask him for his license, but the  
3 police officer said it was my fault. At that point the driver and the woman  
4 just left, walked away.

5 ECF No. 104 at 42.

6 Ms. Hernandez felt discriminated against when she learned that the officers were not  
7 going to write a report stating that the Avalanche driver was at fault and that any report they  
8 would write would say her daughter caused the accident. ECF No. 103 at 56. After hearing this,  
9 Ms. Hernandez backed away from her husband and the officers and noticed the passenger of the  
10 Avalanche was walking back and forth on the sidewalk, looking frustrated. *Id.* Ms. Hernandez  
11 states that the female passenger then began yelling at her and screaming obscenities and that Ms.  
12 Hernandez responded by yelling “bad words” back at her. *Id.* at 63.

13 Ms. Hernandez testified at her deposition that at that point Officer Barker approached her  
14 and told her to “shut up, it is your fault.” *Id.* She states that Officer Barker got upset with her and  
15 pushed his arm against her chest, causing her to step back three steps. *Id.* at 63-64. After this  
16 altercation, Ms. Hernandez went back into her house with J.D.H. and waited for the ambulance.  
17 *Id.* at 64. Officer Barker does not remember this part of the incident. ECF No. 102 at 117.

18 Mr. Dominguez testified at his deposition that Officer Barker mocked his daughter's  
19 injury, pantomimed the accident, and appeared to make fun of Mr. Dominguez. ECF No. 104 at  
20 45. Ms. Hernandez testified that she saw this exchange was well. ECF No. 103 at 61-62.

21 Officers Purcaro and Barker did not file a report or issue a citation regarding the accident,  
22 did not assist in the exchange of information between the driver and the plaintiffs, and did not  
23 impound the vehicle. ECF No. 106 at 177-78.

24 The defendants now move for summary judgment in their favor on all of the plaintiffs'  
25 claims.

## 26 **II. LEGAL STANDARD**

27 Summary judgment is appropriate when the pleadings, discovery responses, and affidavits  
28 “show there is no genuine issue as to any material fact and that the movant is entitled to judgment

1 as a matter of law.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 330 (1986) (citing Fed. R. Civ. P.  
2 56(c)). For summary judgment purposes, the court views all facts and draws all inferences in the  
3 light most favorable to the nonmoving party. *Kaiser Cement Corp. v. Fishbach & Moore, Inc.*,  
4 793 F.2d 1100, 1103 (9th Cir. 1986).

5 The moving party bears the initial burden of showing that there are no genuine issues of  
6 material fact for trial. It can do this by: (1) presenting evidence to negate an essential element of  
7 the nonmoving party’s case; or (2) demonstrating the nonmoving party failed to make a showing  
8 sufficient to establish an element essential to that party’s case on which that party will bear the  
9 burden of proof at trial. *See Celotex*, 477 U.S. at 323–325.

10 If the moving party satisfies its initial burden, the burden shifts to the opposing party to  
11 establish that a genuine dispute exists as to a material fact. *See Matsushita Elec. Indus. Co. v.*  
12 *Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). To establish the existence of a genuine dispute of  
13 material fact, it is sufficient that “the claimed factual dispute be shown to require a jury or judge  
14 to resolve the parties’ differing versions of the truth at trial.” *T.W. Elec. Serv., Inc. v. Pac. Elec.*  
15 *Contractors Ass’n*, 809 F.2d 626, 630 (9th Cir. 1987) (quotation marks and citation omitted). But  
16 the nonmoving party “must do more than simply show that there is some metaphysical doubt as to  
17 the material facts.” *Bank of Am. v. Orr*, 285 F.3d 764, 783 (9th Cir. 2002) (internal citations  
18 omitted). It “must produce specific evidence, through affidavits or admissible discovery  
19 material, to show” a sufficient evidentiary basis on which a reasonable fact finder could find in its  
20 favor. *Bhan v. NME Hosps., Inc.*, 929 F.2d 1404, 1409 (9th Cir. 1991); *Anderson v. Liberty*  
21 *Lobby, Inc.*, 477 U.S. 242, 248-249 (1986).

### 22 **III. ANALYSIS**

#### 23 **A. Equal Protection and Title VI**

24 The plaintiffs assert an equal protection claim against all the defendants and a claim  
25 against LVMPD for discrimination pursuant to Title VI, 42 U.S.C. § 2000d *et seq.* The  
26 defendants argue that there is no evidence that they acted with an intent or purpose to  
27 discriminate against the plaintiffs based on their status as non-English speakers or because the  
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1 plaintiffs are Hispanic. They also contend that there is no evidence that the plaintiffs were treated  
2 differently than others similarly situated. They argue that the plaintiffs' Title VI claim also fails  
3 because there is no evidence that LVMPD or its officers intentionally discriminated against the  
4 plaintiffs.

5 In response, the plaintiffs cite the deposition of Officer Barker, in which he testified that it  
6 was his typical practice to write incident reports when someone was injured, but that he did not  
7 create a report for this accident. ECF Nos. 102 at 47-48; 106 at 177-78. They also cite to the  
8 officers' statements that the accident was the plaintiffs' fault and to the plaintiffs' testimony about  
9 Officer Barker pushing Ms. Hernandez and making fun of Mr. Dominguez . ECF Nos. 103 at 61-  
10 64; 104 at 45. Finally, they cite the testimony of Mr. Dominguez that the officers would not help  
11 him obtain information from the Avalanche driver. ECF No. 104 at 42. Taken together, the  
12 plaintiffs argue this evidence shows that the defendants discriminated against the plaintiffs and  
13 treated them differently because they do not speak English and are Hispanic. The plaintiffs also  
14 argue that the officers' failure to obtain a translator denied them meaningful access to LVMPD's  
15 services.

16 To state a claim under 42 U.S.C. § 1983 for a violation of the Equal Protection Clause of  
17 the Fourteenth Amendment, a plaintiff must show that the defendant acted with an intent or  
18 purpose to discriminate against the plaintiff based upon membership in a protected class.  
19 *Washington v. Davis*, 426 U.S. 229, 239-40 (1976); *Sischo-Nownejad v. Merced Cmty. Coll.*  
20 *Dist.*, 934 F.2d 1104, 1112 (9th Cir. 1991); *Gutierrez v. Mun. Court of the Southeast Judicial*  
21 *Dist.*, 838 F.2d 1031, 1047 (9th Cir. 1988) (purposeful discrimination is an essential element of  
22 an equal protection claim). The plaintiffs have not produced any evidence that the officers acted  
23 with the intent to discriminate against them based on their status as non-English speakers or  
24 because they are Hispanic.

25 The testimony the plaintiffs rely on does not create a genuine issue of fact on their equal  
26 protection claim. The fact that Officer Barker normally creates police reports for accidents but  
27 failed to do so in this case is not evidence of discrimination based on a protected class. There is



1 no evidence that Officer Barker did not write a report because the plaintiffs did not speak English  
2 or because they are Hispanic. Similarly, the testimony related to the officers' conclusion that  
3 J.D.H. was at fault, and Officer Barker's interactions with Ms. Hernandez and Mr. Dominguez,  
4 are not sufficient to establish an equal protection violation. There is no evidence that the  
5 defendants' actions or comments were motivated by a discriminatory intent towards Hispanics or  
6 non-English speakers. Even viewing the facts and making all inferences in the light most  
7 favorable to the plaintiffs, there is insufficient evidence to show (or create a material dispute of  
8 fact) that the officers violated the plaintiffs' Fourteenth Amendment equal protection rights. I  
9 therefore grant summary judgment to the defendants on this claim.

10 For similar reasons, the plaintiffs' Title VI claim against LVMPD fails. Title VI provides  
11 that "[n]o person in the United States shall, on the ground of race, color, or national origin, be  
12 excluded from participation in, be denied the benefits of, or be subjected to discrimination under  
13 any program or activity receiving Federal financial assistance." 42 U.S.C. § 2000d. As a federal  
14 fund recipient, LVMPD must ensure meaningful access to its programs and activities by persons  
15 with limited English proficiency. *See* 28 C.F.R. § 42.104(b)(2). Meaningful access is not  
16 provided when the federal recipient utilizes "criteria or methods of administration which have the  
17 effect of subjecting individuals to discrimination because of their race, color, or national  
18 origin...." *Id.*

19 To state a claim under Title VI, a plaintiff must allege that the entity involved (1) engaged  
20 in unlawful discrimination and (2) was receiving federal financial assistance. *Rodriguez v. Cal.*  
21 *Highway Patrol*, 89 F. Supp. 2d 1131, 1139 (N.D. Cal. 2000) (citing *Fobbs v. Holy Cross Health*  
22 *Sys. Corp.*, 29 F.3d 1439, 1447 (9th Cir. 1994), *overruled on other grounds by Daviton v.*  
23 *Columbia/HCA Healthcare Corp.*, 241 F.3d 1131 (9th Cir. 2001)). A private individual may  
24 bring a private action against government officials under Title VI, but only to the extent that the  
25 claim is premised on intentional discrimination. *See* 42 U.S.C. § 2000d-7(a)(1); *Alexander v.*  
26 *Sandoval*, 532 U.S. 275, 280-81 (2001) (holding that Section 601 of Title VI, providing that no  
27 person shall be subjected to discrimination under any covered program or activity on basis of  
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1 race, color, or national origin, prohibits only intentional discrimination).

2 The plaintiffs have failed to cite any evidence showing intentional discrimination by  
3 LVMPD. They argue that the officers failed to call an interpreter to the scene of the accident.  
4 But the evidence demonstrates that the officers were able to effectively communicate with the  
5 plaintiffs through a bilingual man. ECF No. 102 at 93-94. And even if it is presumed that the  
6 plaintiffs were not provided meaningful access to LVMPD's services through an official  
7 interpreter, the plaintiffs have provided no evidence that this was due to intentional discrimination  
8 by LVMPD or its officers. I therefore grant summary judgment to the defendants on this claim.

9 **B. Negligence**

10 The plaintiffs claim that the defendants breached their duty to comply with Nevada law  
11 and affirmatively caused harm to the plaintiffs by (1) not checking the Avalanche driver's  
12 registration information as required by Nevada Revised Statutes ("N.R.S.") § 484E.060(1), and  
13 (2) failing to complete a police report of the accident and providing it to the Department of Motor  
14 Vehicles ("DMV") as required by N.R.S. § 484E.100. ECF No. 78 at 15-16.

15 The defendants argue the public duty doctrine bars this claim, and that there is no  
16 evidence that the officers actively prevented the plaintiffs from acquiring information. They  
17 argue that no witness has testified that the officers prevented J.D.H. or Ms. Hernandez from  
18 speaking to or obtaining information from the Avalanche driver or passenger. Further, they  
19 submit evidence showing that the plaintiffs obtained the identity of the vehicle's owner and the  
20 vehicle's insurance information in August 2011, less than a month after the accident and almost  
21 two years prior to the initiation of this lawsuit. ECF No. 100 at 177.

22 The plaintiffs respond that the public duty doctrine does not bar the claim because the  
23 officers "significantly delayed [the plaintiffs'] ability to get information they needed to pursue  
24 litigation against the driver." ECF No. 111 at 28-29. They argue that because of the defendants'  
25 conduct, they could not obtain any information regarding the driver's information. They assert  
26 that while they have obtained some information regarding the owner of the Avalanche, that  
27 information did not allow J.D.H. to pursue appropriate legal action because they needed



1 information about the Avalanche driver, not the owner. *Id.* at 12.

2 N.R.S. § 41.0336 codifies the common law public duty doctrine, which provides that the  
3 police owe duties to the public generally, not to particular individuals. *See Coty v. Washoe Cnty.*,  
4 839 P.2d 97, 98-99 (Nev. 1992) (recognizing § 41.0336 as a codification of *Frye v. Clark Cty.*,  
5 637 P.2d 1215 (Nev. 1981), which articulated the common law exceptions to the public duty  
6 doctrine). Under § 41.0336, a law enforcement agency and its officers are not liable for the  
7 officer's negligent acts or omissions unless the officer made a promise to a plaintiff who relied on  
8 the promise, or unless the officer affirmatively caused the plaintiff's injury. An officer  
9 affirmatively causes the harm if he "actively create[s] a situation which leads directly to the  
10 damaging result." *Coty*, 839 P.2d at 99. Additionally, "statutes and ordinances can create a  
11 special duty exception to the public duty doctrine" if the statute or ordinance sets forth  
12 "mandatory acts clearly for the protection of a particular class of persons rather than the public as  
13 a whole' . . . ." *Id.* at 99 n.6 (quoting *Morgan v. District of Columbia*, 468 A.2d 1306, 1314 (D.C.  
14 Ct. App. 1983)).

15 The Supreme Court of Nevada has not addressed whether the public duty doctrine would  
16 bar a plaintiff's negligence claim against police officers based on their failure to collect  
17 information at the scene of an accident or for their conduct in preventing the plaintiffs from  
18 collecting that information. "Where the state's highest court has not decided an issue, the task of  
19 the federal courts is to predict how the state high court would resolve it." *Giles v. Gen. Motors*  
20 *Acceptance Corp.*, 494 F.3d 865, 872 (9th Cir. 2007) (quotation omitted).

21 When this accident occurred in 2011, N.R.S. § 484E.060 required a peace officer at the  
22 scene of an accident to check whether each vehicle involved in an accident was validly registered  
23 and, if not, to issue a citation and impound the car until any defects were cured. ECF No. 77 at 6-  
24 7. Nothing in the statute required an officer to provide those involved in the accident with any  
25 information obtained from the records check. Nor was that statute clearly enacted for the  
26 protection of any particular class of persons as opposed to the public as a whole. Thus, it did not  
27 create a special duty beyond an officer's general duty to the public. I therefore previously held

1 that an officer's failure to comply with these requirements does not create an exception to the  
2 public duty doctrine. *Id.*

3 In 2011, N.R.S. § 484E.110 imposed a mandatory requirement on officers who  
4 investigated serious accidents to submit to the DMV a written report containing, among other  
5 things, the identity of the parties involved and information about their insurance to the extent that  
6 information was available. *Id.* at 7-8. In my prior order I held that an officer's failure to prepare  
7 such a report did not trigger an exception to the public duty doctrine because this mandatory act  
8 was for the protection of the public at large rather than for a particular class of people. *Id.* at 8. I  
9 continue to agree with the Court of Appeals of North Carolina that "[t]he duty to investigate  
10 motor vehicle accidents and to prepare accident reports is a general law enforcement duty owed to  
11 the public as a whole," and not to any particular individual. *Inman v. City of Whiteville*, 763  
12 S.E.2d 332, 335-36 (N.C. Ct. App. 2014) (holding public duty doctrine barred a negligence claim  
13 based on the responding officer's failure to gather information from a driver who allegedly  
14 caused an accident). Consequently, in this case, the police officers' alleged failure to prepare a  
15 written report, standing alone, is insufficient to trigger an exception to the public duty doctrine.

16 Nevertheless, I allowed the plaintiffs to amend their complaint to add this negligence  
17 claim because they had alleged that the officers actively prevented the plaintiffs from acquiring  
18 information from the Avalanche driver. I noted that while "[t]he officers did not cause the  
19 accident that injured J.D.H., . . . they created a situation which potentially prevented the plaintiffs  
20 from discovering the identity of the person who allegedly harmed J.D.H., thereby potentially  
21 depriving the plaintiffs of available legal remedies against that person or his insurer." ECF No. 77  
22 at 8. I thus predicted that under these circumstances, the Supreme Court of Nevada would hold  
23 that an exception to the public duty doctrine applied in this case.

24 The defendants now argue that there is no evidence that the officers actively prevented the  
25 plaintiffs from obtaining information, and that the plaintiffs did, in fact, obtain information about  
26 the vehicle less than a month after the accident. The plaintiffs have offered no evidence refuting  
27 this. There is no evidence that the officers actively prevented the plaintiffs from obtaining  
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1 information from the Avalanche driver or passenger, and the plaintiffs have failed to demonstrate  
2 any damage caused by the officers' failure to submit a report. The officers did not create a  
3 situation that prevented the plaintiffs from discovering the identity of the person who allegedly  
4 harmed J.D.H. Therefore, the public duty doctrine bars this claim.<sup>2</sup> For these reasons, I grant  
5 summary judgment to the defendants on this claim.

6 **C. Fraudulent Misrepresentation**

7 The plaintiffs claim that the officers falsely represented to them that they did not have the  
8 right to obtain the registration and insurance information of the drivers and owners of the  
9 Avalanche and ice cream truck. ECF No. 78 at 16-17. The plaintiffs also allege the officers  
10 "intentionally falsely represented that they could not help [Ms. Hernandez] and J.D.H. because  
11 they alleged [Ms. Hernandez] and J.D.H. were at fault." *Id.* at 17.

12 The defendants point out that Ms. Hernandez testified at her deposition that the officers  
13 never told her that she did not have a right to information and never said they could not help her  
14 because she and J.D.H. were at fault. ECF No. 103 at 83. The defendants also cite to J.D.H.'s  
15 deposition testimony that she never spoke to the officers. ECF No. 105 at 26.

16 The plaintiffs counter that Mr. Dominguez testified that he asked the police officers to  
17 obtain information from the Avalanche driver but the officer told him that the accident was the  
18 plaintiffs' fault. ECF No. 104 at 42. Thus, the plaintiffs contend there are genuine issues of  
19 material fact related to this claim.

20 The elements of a fraudulent misrepresentation claim are: "(1) [a] false representation  
21 made by the defendant; (2) defendant's knowledge or belief that its representation was false or  
22 that defendant has an insufficient basis of information for making the representation; (3)  
23 defendant intended to induce plaintiff to act or refrain from acting upon the misrepresentation;  
24 and (4) damage to the plaintiff as a result of relying on the misrepresentation." *Barmettler v. Reno*

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26 <sup>2</sup> And because the plaintiffs have failed to submit evidence showing that the officers'  
27 conduct actually caused them harm, they have also failed to establish that element essential of  
28 their negligence claim.



1 *Air, Inc.*, 956 P.2d 1382, 1386 (Nev. 1998) (citing *Bulbman Inc. v. Nevada Bell*, 825 P.2d 588,  
2 592 (Nev. 1992); *Lubbe v. Barba*, 540 P.2d 115, 117 (Nev. 1975)).

3 Both Ms. Hernandez and J.D.H. testified that the officers made no representations to them  
4 about their legal rights or the officers' inability to assist them. ECF Nos. 103 at 83; 105 at 26.  
5 There is no evidence that either officer told the plaintiffs that they did not have the legal right to  
6 the registration and insurance information. There is no evidence that the officers' statements that  
7 the plaintiffs were at fault were false or that the officers ever said that they were unable to help  
8 the plaintiffs. Although Mr. Dominguez testified that the officer refused to obtain information  
9 from the Avalanche driver on his behalf (*See* ECF No. 104 at 42), the refusal to collect  
10 information is not a "representation" that could be fraudulent.

11 Even if the plaintiffs had presented evidence that the officers made false representations,  
12 this claim would still fail because the plaintiffs have submitted no evidence showing they were  
13 damaged as a result of relying on any such misrepresentation. The plaintiffs obtained the identity  
14 of the Avalanche owner and the vehicle's insurance information in August 2011, less than a  
15 month after the accident occurred. *See* ECF No. 100 at 177. The plaintiffs offer no explanation  
16 how they were nevertheless harmed as a result of the defendants' representations. Where an  
17 essential element of a claim for relief is absent, "there can be no genuine issue as to any material  
18 fact, since a complete failure of proof concerning an essential element of the nonmoving party's  
19 case necessarily renders all other facts immaterial" and summary judgment is proper. *Celotex*,  
20 477 U.S. at 323-24. The plaintiffs have failed to prove the essential element of damages caused  
21 by any alleged false representation.

22 I therefore grant the defendants summary judgment on this claim because, viewing the  
23 facts in the light most favorable to the plaintiffs, there is no evidence that defendants made the  
24 alleged misrepresentations or that the plaintiffs were harmed.

#### 25 **D. IIED**

26 The plaintiffs claim that the officers intentionally caused J.D.H. and Ms. Hernandez  
27 severe emotional distress. ECF No. 78 at 18-19. The defendants argue that there is no evidence  
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1 that the plaintiffs suffered distress and the officers' actions did not rise to the level of extreme or  
2 outrageous. They cite to Ms. Hernandez's deposition testimony that she is not claiming she  
3 suffered any distress as a result of the incident, and to J.D.H.'s deposition testimony that she  
4 could remember very little about the accident and does not remember her foot being run over.  
5 ECF Nos. 103 at 88; 105 at 23-24.

6 The plaintiffs concede that Ms. Hernandez has failed to present sufficient evidence to  
7 support an IIED claim. However, they argue that given J.D.H.'s young age at the time of the  
8 accident, it is understandable that her recollection of the incident and its effect on her would be  
9 diminished. Nevertheless, they contend that J.D.H. suffered extreme emotional distress and that  
10 this issue should be left for the jury.

11 Under Nevada law, an IIED claim requires that the plaintiff prove (1) extreme and  
12 outrageous conduct with either the intention of, or reckless disregard for, causing emotional  
13 distress, (2) the plaintiff suffering severe or extreme emotional distress, and (3) actual or  
14 proximate causation. *Star v. Rabello*, 625 P.2d 90, 91 (Nev. 1981). The plaintiffs concede that  
15 Ms. Hernandez cannot maintain her IIED claim. As to J.D.H., the plaintiffs cite no evidence  
16 showing that she suffered any emotional distress as a result of the officers' conduct (different  
17 from distress caused by the accident itself). Viewing the evidence in the light most favorable to  
18 the plaintiffs, neither Ms. Hernandez nor J.D.H. can maintain her IIED claim. I therefore grant  
19 the defendants summary judgment on this claim.

20 **IV. CONCLUSION**

21 IT IS THEREFORE ORDERED that the defendants' motion for summary judgment  
22 **(ECF No. 99) is GRANTED.** The clerk shall enter judgment in favor of the defendants on all  
23 claims asserted in the amended complaint.

24 DATED this 23<sup>rd</sup> day September, 2016.



25 ANDREW P. GORDON  
26 UNITED STATES DISTRICT JUDGE  
27  
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